IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

CONTEMPT PETITION NO.16 OF 2004

IN

NOTICE OF MOTION NO.2801 OF 2003

IN

ARBITRATION AWARD DATED 12TH SEPTEMBER,2000

...

Kotak Mahindra Bank Limited

(formarly known as Kotak Mahindra

Finance Ltd.) ...Petitioner

v/s.

Elbee Services Ltd. & Anr. ...Respondents

...

AND

CONTEMPT PETITION NO.118 OF 2003

IN

ARBITRATION PETITION NO.177 OF 2002

...

TATA Finance Ltd. ...Petitioner

v/s.

Elbee Services Ltd. & Anr. ...Respondents

...

Mr.B.B.Saraf i/b Kartikaya & Associates for the Petitioner.

Mr.A.Y.Bookwala i/b M.U.Pandey for the Respondents.

...

CORAM: D.K.DESHMUKH, J.

DATED: 27TH FEBRUARY,2007

P.C.:

1. The facts that are material and relevant for deciding this petition are that admittedly there is an award made in favour of the Petitioner and against the Respondents Nos. 1 & 3. That award has become decree. Execution application was taken out for execution of that award, which has become a decree. In that execution, a Chamber Summons was taken out by the Petitioner. In that Chamber Summons after hearing both the sides, the court made an order directing that the persons and companies whose names are listed to Exh.C to the affidavit filed in support of the Chamber Summons to deposit in the court 50% of the amount due and payable by them to the Respondents and the claimant/Petitioner was directed to withdraw the amount till they get Rs.3,25,86,068/-. Chamber Summons was also granted in terms of prayer clause (d). Prayer clause (d) reads as under:-

> (d) that this Hon’ble Court be pleased to attach the amounts due and payable to the Respondents by the debtors/persons mentioned in Schedule being Exhibit "C" to the Affidavit in support and direct such debtors/persons to deposit the same in this Hon’ble Court.

Paragraphs 8, 9 & 10 of that order are relevant. They read as under:-

> 8. Having heard the parties, the persons/companies listed at Exhibit "C" to the affidavit to support of the Chamber Summons are directed to deposit in this Court 50% of the amounts due and payable by them to the Respondents. The Claimant is allowed to withdraw these amounts till they get Rs.3,25,86,068/-.
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> 9. In view of the above, Chamber Summons allowed in terms of prayer (d).
>
> 10. Injunction granted in terms of prayers (b)(ii) and (b) (iii) will continue. In the event, the need arises, the Claimant may file proceedings for the reliefs claimed in prayer

(c) of the Chamber Summons.

2. Thus, by this order the debtors of the Respondents were directed to deposit 50% of the amount that they are liable to pay to the Respondents in this court and the amounts were also attached. An appeal being Appeal No.554 of 2003 was preferred against that order passed in the Chamber Summons before the Appeal Court. In that Appeal, on 23rd July, 2003 the court made an interim order. It is paragraphs 4 & 5 of that order which is relevant. It reads as under:-

> 4. In the mean time the appellants agree not to receive any payment from any of the persons listed in Exh.C to the affidavit in support till further orders.
>
> 5. Impugned order dated 30th June, 2003 of the learned single Judge is stayed.

3. Thus, by this order on the Respondents making a statement that they will not receive any money from their debtors, this court stayed the operation of the order passed by the learned Single Judge which is

quoted above.

4. By order dated 4-8-2003 passed by the Appellate Court, paragraph (4) of the order dated 23rd July, 2003 was substituted and now paragraph (4) of the order dated 23rd July, 2003 as a consequence of the order dated 4-8-2003 reads as under:-

> "The appellants are at liberty to receive payment from any of the persons listed in Exhibit "C" to the affidavit in support subject to their filing written undertaking that within 48 hours notice they will deposit 50% of the said amount in this court."

5. It appears that the Respondents received amounts from their debtors and nothing was deposited in the court. Therefore, Notice of Motion No.2801 of 2003 was taken out by the present Petitioner in Appeal No.554 of 2003. On that Notice of Motion on 26th September, 2003 the court made ad-interim order in terms of prayer clause (c) of the motion. This order was made after hearing the Respondents and the Petitioner.

6. By that order dated 26th September, 2003 the

Appeal Court directed the Respondents to deposit in the court 50% of the amount received by them from their debtors from 30-6-2003. This order was not complied with. The present contempt petition was filed in January, 2004. An affidavit was filed by Respondent No.3 in this Contempt Petition on 17th March, 2004. In that affidavit he stated that he did not receive any amounts from the debtors before 4th August, 2003 and that whatever amounts were received were after 4th August, 2003. He also filed a statement showing the amounts received by him from the debtors after 30-6-2003. When this contempt petition was being heard by the court, the court found that though there is a clear statement made on behalf of the Respondents that they will not receive any amounts which is recorded in the order dated 23rd July, 2003, the Respondents actually received the amounts contrary to their statement and the court also found that the statement made in the affidavit of the Respondents that they did not receive any amount before 4th August, 2003 is incorrect statement. Therefore, a show cause notice was issued as to why for making the false statement they should not be proceeded against under the Contempt of Courts Act.

7. It appears that thereafter the Petitioner took out Notice of Motion No.456 of 2006 in Appeal No.554 of 2003. By prayer clause (b) a prayer was made that this court should direct the Respondents to comply with the order passed by the Division Bench dated 28th September, 2003 and the order dated 23rd April, 2004 passed in Notice of Motion No.2801 of 2004. As pointed out above, by the order dated 28th September, 2003 the Respondents were directed to bring back the money that they have received from the debtors. When Notice of Motion No.2801 of 2003 was again moved before the Division Bench, Division Bench noted that the Respondents have flouted the orders of the court and the Division Bench observed that Notice of Motion No.2801 of 2003 will be taken up for final hearing only after the amount is brought back to the court. Paragraph 4 of that order is relevant, which reads as under:-

> 4. Having heard both the Counsel, we are of the view that the Appellants are trying to take advantage of the process of the Court. If any such submission is permitted, it will mean that the parties will flout the orders passed at the ad-interim stage and move for review later on and then insist on a Motion to

be heard without complying with the ad-interim order. It is an accepted position that taking advantage of the order passed by the earlier Bench, an amount to the tune of Rs.63 lacs has been collected by the appellants. Some explanation is sought to be given in the affidavit with respect to the circumstances why the amount is not being deposited. We will consider the submissions only after the deposit is made. Motion to be heard after the ad-interim order passed earlier is complied with.

8. Perusal of the above quoted paragraph (4) shows that the Division Bench has recorded a clear finding that the Respondents have flouted the orders made by the court and they have taken disadvantage of the order that has been passed by the court. By prayer clause (c) of the motion No.456 of 2006 the Respondents requested that the court should recall the order passed in Appeal dated 23rd July, 2003 as amended by order dated 4th August, 2003. Notice of Motion No.456 of 2006 was disposed of by the Division bench by order dated 13th April, 2006 and the Division Bench granted that motion in terms of prayer clause (c). The net result was the interim order

dated 23rd July, 2003 as modified by the order dated 4th August, 2003 stood recalled. The consequence is that there is no interim order operating in the appeal, but the fact remains that there was interim order secured by the Respondents from the Appeal court. According to the Petitioner, the Respondents have flouted the order passed by the learned single Judge as also the order passed by the Appeal Court and that they have done it willfully.

9. For appreciating the controversy that is involved it is necessary to understand that on 30-6-2003 the amounts which are receivable by the Respondents were attached and debtors were directed to deposit 50% amount in the court and that order was in force till 23rd July, 2003. On 23rd July, 2003 that order was stayed on a statement made by the Respondents that they will not receive any money. That statement remains in force from 23rd July, 2003 to 4th August, 2003. On 4th August, 2003, the order was modified by the court and now pursuant to that order the Respondents were at liberty to receive the money from the debtors but they had to file an undertaking in the court that they will bring back the amount in court after the court gives them 48 hrs. notice to bring the amount in court. From the affidavit of the

third Respondent dated 7th March, 2004 and the documents filed with that affidavit it is clear that though he had made statement before the court on 23rd July, 2003 that they will not receive the money from his debtors, he received Rs.4,561/- from the HDFC Bank on 31-7-2003, Rs.26,759/- on 24-7-2003 from Central Bank of India, Rs.1,10,905/- on 29-7-2003 from ICICI Bank. Rs.2,77,008/- on 31-7-2003 from the same ICICI Bank and an amount of Rs.2,70,686/- on 31-7-2003 from the Citibank. Though these amounts have been received, one does not find any explanation given either in the affidavit dated 7th March, 2004 or in the further affidavit dated 14th July, 2006 as to why third Respondent received the amount from the debtors when he had made a specific statement to the court that he will not receive the amount and on the basis of that statement he secured stay of the operation of the order dated 30-6-2003. Thus, the case of not abiding by statement made before the court for the purpose of securing interim order from the court is clearly made out.

10. By the modified order the Respondents were at liberty to receive the amount, but they have undertaken to the court that they will bring back the amount on 48 hrs. notice. If the Respondents had

any intention to abide by that undertaking, they would have set apart that amount so that that can be deposited in the court as per their own undertaking with 48 hrs. notice. But it is clear from affidavit filed by the Respondent No.3 himself that he spent the amount and did not set it apart. Therefore, the Petitioner moved the Appeal Court by taking out Notice of Motion No.2108 of 2003 and by order dated 6th September, 2003 the Division Bench issued a clear direction to the Respondents to deposit 50% of the amount that they have received from 30-6-2003. According to affidavit of the third Respondent himself he had received an amount of Rs.63,29,503/-. Therefore, in order to abide by that order he had to deposit that amount in court. He did not do so and the explanation that is given is that those amounts were utilised in clearing the liability of the Respondents towards workers and others. One does not find any explanation why if the Respondents received the amount, on their undertaking to the court that they will bring back the amount on 48 hours notice, the Respondents spent the amount. What is pertinent is that though the Respondents claimed that they have spent the amount on paying salaries and on workers' welfare and other things, there are no documents produced to show that either those amounts were due

from the Respondents or they were actually paid. The fact that the amounts were due from the Respondents to the workers and others and that they were actually paid is a fact within the special knowledge of the Respondents and therefore, if they wanted to rely on that a mere statement by them on oath is not enough. They ought to have produced material in support of the claim. Nothing has been produced. Therefore, firstly, the Respondents were not justified in spending the amount which they received pursuant to the undertaking given to the court and secondly the case of the third Respondent that the amount was spent also cannot be accepted, because there is no evidence produced. Thus, there is a clear case of willful violation of the orders made by the learned single Judge as also the Division Bench. The material available on record shows that the third Respondent is a person who has no regard for the court and the orders made by the court. The Respondent No.3 has thus willfully violated the order passed by this court and has made a false statement to the court in order to secure favourable orders in his favour. Respondents Nos. 1 & 3 are, therefore, guilty of having committed civil contempt.

11. The learned Counsel appearing for the third

Respondent submits that the third Respondent has submitted an apology. The material available on record shows that the apology is not genuine. The apology given by him is like all other statements he has been making to the court. In my opinion, therefore, the apology cannot be accepted.

12. So far as aspect of punishment is concerned, in my opinion, the punishment that is to be imposed on the Respondent has to be considered also with reference to Contempt Petition No.118 of 2003. In that petition also I have found that the third Respondent has given undertaking to the court with no intention to abide by that undertaking and that he has violated the order made by the court. Considering the conduct of the Respondent No.3, in both these petitions, I propose to pass a common order in relation to the punishment in the present Contempt Petition and Contempt Petition No.118 of 2003.

13. The learned Counsel appearing for the third Respondent relied on a judgment of the Supreme Court in the case of Smt.Pushpaben and another v/s. Narandas V. Badiani and another, (1979) 2 SCC 394, specially in observations found in paragraph 6 of

that judgment. They read as under:-

> 6. A close and careful interpretation of the extracted section leaves no room for doubt that the Legislature intended that a sentence of fine alone should be imposed in normal circumstances. The statute,however, confers special power on the Court to pass a sentence of imprisonment if it thinks that ends of justice so require. Thus before a Court passes the extreme sentence of imprisonment, it must give special reasons after a proper application of its mind that a sentence of imprisonment alone is called for in a particular situation. Thus, the sentence of imprisonment is an exception while sentence of fine is the rule.

14. Perusal of the above quoted observations from the judgment of the Supreme Court shows that in normal circumstances the court should impose fine in the matter of civil contempt of the court. The court can impose sentence of imprisonment only in case the court thinks that ends of justice so require. The submission of the Petitioner in both these petitions is that looking to the conduct of the third

Respondent, this is a fit case where sentence of imprisonment should be imposed. Perusal of both these petitions and the orders passed by me in both these petitions shows that the Respondent No.3 has no regard either for truth or for the dignity of the court. He appears to be under the impression that he can use the court's machinery by making a false statement and by giving undertaking which he has no desire to abide by. He secured interim orders from the court by making statement before the court and he immediately acted contrary to the statement and he does not think it necessary that he is liable to give any explanation to the court why he has done it. In my opinion, if there is one case where it would be in the interest of justice to impose punishment of imprisonment, it is this case, because the Respondent No.3 has made false statements and ha given undertaking casually and deliberately with no intention to abide by it. If the litigants like the Respondent No.3 are not adequately punished, there is a danger of people losing their faith in the system itself. In my opinion, it is a fit case where not only sentence of imprisonment should be imposed, but maximum sentence should imposed.

16. The Respondent No.3 is, therefore, sentenced to

undergo simple imprisonment for a period of six months. He is also directed to pay fine of Rs.2000/- in each of these two petitions.

17. The Respondent No.3 shall also pay costs of both petitions to the Petitioner. The costs in each petition are quantified at Rs.15,000/-(Rupees Fifteen Thousand only).

18. At the request of the learned Counsel appearing for the Respondent No.3, the operation of the order imposing sentence is stayed for a period of four weeks from today. It is clarified that the order imposing costs and fine is not stayed. That order has to be complied with within a period of two weeks from today. As a condition of order granting stay to the operation of the order imposing sentence, within a period of two weeks from today the Respondent No.3 is directed to file an affidavit disclosing the exact date and the name of the authority before whom he has surrendered his passport and also produced receipt that must have been issued by the authority after having received the passport. This direction is being issued because the third Respondent has filed an affidavit that his passport has been surrendered

to CBI. In case the third Respondent fails to file an affidavit in compliance with this direction, the order granting stay to operation of the order imposing punishment shall cease to operate.

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